COURT NO.3

Criminal Miscellaneous application no. 109 of 2002

Smt. Nidhi Jain----------Applicant

Versus

State of Uttaranchal and 2 others----------Respondents

AND

Criminal Miscellaneous application no. 117 of 2002

Deepak Jain ----------Applicant

Versus

State of Uttaranchal and 2 others

Hon'ble Irshad Hussain J.

These two petitions are filed under section 482 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for the short) to quash the first information report (FIR) in case crime no.138/2002 under sections 498 A and 307 of the Indian Penal Code, 1860 (IPC for the short) and $^{3}/_{4}$ Dowry Prohibition Act. The FIR was lodged with the allegations that Smt. Silpi Jain was subjected to cruelty and was also ill-treated for not bringing sufficient dowry and was also assaulted on 11.5.2002 by her husband, Deepak Jain petitioner of petition no.117/2002 and her sister-in-law (Nanad) Smt. Nidhi Jain, the petitioner of petition no.109/2002 amongst other accused.

2. It was also alleged in the FIR that soon after the marriage the accused started ill-treating the bride Smt. Silpi Jain for not bringing adequate dowry for and in connection with demand of extra items of dowry as well as cash money. On 11.5.2002 the accused called upon the said bride to bring amount of rupees two lacs form her father and on her refusal to agree to the proposal she was physically assaulted by the accused. Her husband, the petitioner Deepak Jain with intention to kill her dashed her head against a wall. Smt. Silpi Jain begged for mercy and saved herelf by making a promise to bring rupees two lacs from her father for being paid to the accused named in the FIR. On 13.5.2002 Smt. Silpi Jain was medically examined for her injuries

and when her father, the complainant returned to Rishikesh he was told about the incident whereupon the FIR was lodged on 14.5.2002.

3. Heard Sri Vikram Gulathi and Sri Ramjee Srivastava for the petitioners and learned A.G.A. and Sri S.P.S. Panwar for the respondents.

4. It was submitted on behalf of the petitioners that the FIR based on false allegations merely to harass the petitioners and other family members who have been arraigned as accused was lodged when the petitioner Deepak Jain did not accede to demand of payment of rupees five lacs made by respondent no.3, the father of the bride who had put in a huge loss in his business. It was further submitted that the petitioner Deepak Jain had always been treating the wife nicely and had even purchased a car in the name of his wife and since the marriage was solemnized without any dowry, there was no question of making demand for extra dowry and also there was no cause for ill-treating the bride. The allegation that on 11.5.2002, the accused and the bride happened to be in Gurgaon where the petitioner Deepak Jain was posted in connection with his employment is also false and that there was no occasion for the accused to physically assault the bride there on that day. in support of the submissions copies of the documents were produced. On the other hand, it was submitted on behalf of the respondent that the scope and the power of the court under section 482 Cr.P.C. has been narrowed down in several judicial pronouncement of the Apex Court and the power under section482 Cr.P.C. is to be exercised in the rarest of rare cases and further that if on the face of the FIR itself the offence is prima facie appear to be made out, the court will have no authority or jurisdiction to go into the matter or examine its correctness.

5. Having considered the submissions in the light of the facts of the case and the categorical allegations of demand of dowry, harassment and cruelty towards the bridge, it can at the out set be said that the petitions are without force and need to be dismissed.

6. The reasons are that in the leading case of **State of Haryana and others Versus Bhajan Lal, 1992 Supp (1) SCC 335,** the Apex Court by

way of illustration stated seven categories of cases wherein the power under Article 226 of the Constitution of inherent powers under section 482 Cr.P.C. can be exercised by the High Court either to prevent abuse of process of any court or otherwise to secure the ends of justice. out of the seven categories two categories are relevant for the purpose of the present case, viz:-

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Whether the allegation in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under section 156 (1) of the Code except under an order of a Magistrate within the purview of section 155(2) of the Code.

7. In the FIR, annexure 1, there are categorical allegations of demand of dowry, ill treatment as well as assault on the person of the bride for not fulfilling the illegal demand of extra items of dowry and the allegations being inherently probable are also supported by the medical evidence, annexure 2. The Medical Officer examined the bride Smt. Silpi Jain on 13.5.2002 and found the injuries about two days old, which could be referred to the date of incident, i.e. 11.5.2002 when the bride was assaulted by the accused including the petitioners and she was subjected to pressure and undue influence to bring an amount of rupees two lacs from her father. In view of the specific allegations made in the FIR, it cannot be said that no prima facie case was made out against the accuse persons including the petitioners of the case and that it does not disclose a cognizable offence. As is well settled, at this stage the court is not required to make any inquiry as to the correctness or otherwise of the allegations and also in regard to the reliability of the material filed in support of the petition that since the petitioner husband had purchased a car in the name of his wife he and other accused could not have demanded money or extra items of dowry and could not have ill treated or assaulted the bride. In other words, there is no need at this stage to adjudicate upon the material brought on record to suggest that there was no occasion for the accused and others to have assembled at Gurgaon on 11.5.2002.

8. For the above reasons and discussions it is obvious that the offences have been disclosed in the FIR which taken at its face value make out prima facie case against the petitioners and others and therefore, the question of quashing the FIR under the inherent powers of the court does not arise.

The petitions being without force are hereby dismissed.

(Irshad Hussain J.)

September 2, 2002.
MPS